

**Remarks/Arguments**

**New Claims**

The new claims are fully supported by the specification and add no new matter. Claim 14 recites the linkage of elements of Claim 1 to the channel hub, as fully disclosed by Figure 1. Also, page 24, line 2 describes the retailer communicating an Offer Choice to the hub. Paragraph [00119] on page 58 describes generation of a set of product offers by the hub. Page 23, line 17 states that the hub communicates offer selections to the supplier. Page 63, paragraph [00136] describes analysis by the hub. Claim 15 essentially incorporates the elements of Claim 5 into Claim 14.

**The Rejection of Claim 1 Under 35 U.S.C. §112, Second Paragraph**

The Examiner rejected Claim 1 (including Claims 2-4) under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner has stated that Claim 1 recites the consumer receiving a payment.

Applicants are appreciative of the Examiner's concerns regarding the phrasing of Claim 1. However, Applicants respectfully disagree with the Examiner's interpretation of Claim 1 and submit that the claim as written recites the offer to pay as being received by a participating retail wine/spirit establishment, not a consumer. Further, as is well known in the art, contact between a supplier and a consumer of wine and spirits is strictly regulated and extremely limited under current law. The Background section of the present application, in particular, paragraph [0005], describes some legal restrictions regarding communications between suppliers and consumers. As a result, a supplier cannot make an offer of payment to a consumer. Therefore, it is clear to one skilled in the art that the offer of payment recited in Claim 1 cannot be between a supplier and a consumer.

However, to add further clarification, Applicants have amended the first clause of Claim 1 as follows: "receiving an offer at a channel hub from at least one wine/spirit supplier to pay for

a solicitation to at least one identified consumer of a participating retail wine/spirit establishment for a selected set of products, where said offer to pay is made by said supplier to said participating retail wine/spirit establishment;” The phrase added to the end of the clause makes it even clearer that the offer to pay is made to the retail establishment, not to the customer.

Applicants respectfully submit that amended Claim 1 overcomes the rejection under 35 U.S.C. §112, and reconsideration is requested.

The Rejection of Claims 1 through 13 Under 35 U.S.C. §102(b)

The Examiner rejected Claims 1-13 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 6,351,738 (Clark). Applicants respectfully traverse the rejection.

Anticipation requires that all of the elements of the claim be taught within the four corners of a single reference.

**A. Claim 1**

Clark does not teach a supplier offering to pay a retailer for a solicitation

Clark does not teach the Claim 1 element of: “receiving an offer from at least one wine/spirit supplier to pay for a solicitation to at least one identified consumer of at least one participating retail wine/spirit establishment for a selected set of products, where said offer to pay is made by said at least one supplier to said participating retail wine/spirit establishment;” Instead, Clark teaches the Hub Business Entity (HBE) conveying an incentive to retailers in response to transactions (purchases) between the retailers and the supplier: “*In turn for the many transactions* (emphasis added) between the suppliers 424 and participants 414, 414', the suppliers may offer *volume rebates or other incentives* (emphasis added) that may be conveyed by HBE 412 through e-commerce system 422 to participant's 414, 414'.” Thus, Clark is teaching a conditional incentive directly related to past purchases of “business support mechanisms” by the participant. That is, the incentive is only conveyed to the participant after the participant has fulfilled a specified requirement, for example, purchasing a certain amount of product from the supplier. In contrast, the above element of Claim 1 does not recite an incentive (i.e., cash rebate etc.) being conveyed from the supplier to the retailer. Rather, there is an offer by a supplier to a

retailer to pay for a solicitation by the retailer to a customer of the retailer. Any payment from the supplier to the retailer will take place in the future, based on the retailer's acceptance of the offer. The payment, when made, will be with respect to a solicitation to be made by the retailer, not with respect to purchases by the retailer from the supplier. That is, the offer is not contingent upon a number of transactions between the supplier and the retailer as is the incentive taught by Clark. Alternately stated, the offer by the supplier to the retailer in Claim 1 is a unilateral action by the supplier, not a conditional response to activities, specifically transactions, by the retailer.

Clark does not teach the relationship of supplier to retailer and retailer to customer

Clark fails to teach the unique configuration, recited in Claim 1 and mandated by applicable laws, rules, and regulations, between: suppliers and retailers; and retailers and retail customers, in the wine and spirits industry. As is well known, a supplier of wines or spirits cannot communicate directly with a retail customer at the time of purchase of wines or spirits. Claim 1 recites the element of a supplier offering to pay a retailer to make a solicitation to a retail customer. The offer of payment recited in Claim 1 is between the supplier and retailer and does not involve the customer. The solicitation recited in Claim 1 is between the retailer and the retail customer and does not involve the supplier. Thus, Claim 1 recites a mechanism for interactions in the wine and spirits industry that comply with the strict legal requirements to maintain separation between suppliers and retail customers. Clark does not teach, suggest, or motivate such an arrangement.

Clark does not teach a channel hub analyzing information

Clark does not teach the amended Claim 1 element of: "analyzing information related to said subset of said set of product offerings with a computer, where said computer is part of said channel hub" Assuming *arguendo* that the Hub Business Entity (HBE) of Clark is analogous to the channel hub of the present invention, Clark teaches management of transactional data by the HBE: "So configured, HBE 412 essentially functions to *monitor and control* (emphasis added) the income and business support mechanisms streams between the participant's 414, 414', customers 418 and the suppliers of business support mechanisms 416." (Col. 9, lines 42-45). "As part of this functionality, the e-commerce system 422, through the website or otherwise,

should contain or be accessible to a trading engine capable of *managing* (emphasis added) all relevant transactional data as well as relevant archival databases.” (Col. 11, lines 30-34). It is clear that managing data, for example, storing and sorting, is different than analyzing data, for example, extrapolating data to identify consumer trends. Clark is silent regarding any type of analysis in his system. In fact, the word “analysis” is not used in Clark. Therefore, Clark does not teach any aspect of his system analyzing information, specifically, information regarding a subset of a set of products.

Clark does not teach all the elements of Claim 1. Therefore, Clark does not anticipate Claim 1. Claims 2-5, dependent from Claim 1, also are novel with respect to Clark. Applicants request that the rejection be removed.

#### **B. Claims 6, 8, and 10**

##### Clark does not teach the hub analyzing information from a retailer

As noted for Claim 1, Clark does not teach the HBE analyzing information, specifically, information regarding a subset of a set of products. Therefore, Clark does not teach the Claims 6, 8 and 10 element of: “analyzing information ... related to said subset of said set of product offerings with a computer, where said computer is associated with said hub.”

Clark does not teach all the elements of Claims 6, 8, and 10. Therefore, Clark does not anticipate Claim Claims 6, 8, and 10. Claim 7, dependent from Claim 6, also is novel with respect to Clark. Claim 9, dependent from Claim 8, also is novel with respect to Clark. Claim 11, dependent from Claim 10, also is novel with respect to Clark.

Applicants request that the rejections be removed.

#### **C. Claim 12**

##### Clark does not teach the hub formulating a promotional offer to a consumer

Claim 12 recites: “transmission of a customized promotional offer *created at least in part by a computer* (emphasis added), from a channel hub directly to consumers of retail wine/spirit establishments, where said computer is associated with said channel hub and said transmission is paid for by a supplier of wine/spirits.”

As noted in the arguments for Claim 1, Clark teaches a volume rebate or other incentive to the participants. Such incentives are not analogous to a promotion directed to a consumer of the participant. Clark teaches that the incentives are solely directed to the participants. Further, Claim 12 clearly recites the channel hub formulating, at least in part, the promotional offering. Clark teaches that the HBE passes along incentives it receives from suppliers: “the suppliers may offer volume rebates or other incentives that may be *conveyed* (emphasis added) by HBE 412 through e-commerce system 422 to participant's 414, 414'.” (col. 11, lines 62-66). That is, the HBE has no role in creating an incentive.

Clark does not teach all the elements of Claim 12. Therefore, Clark does not anticipate Claim 12. Claim 13 depends from Claim 12 and also is novel with respect to Clark. Applicants request that the rejection be removed.

#### **D. New Claims 14 and 15**

Claims 14 and 15 recite: “communicating, from a channel hub, an offer from at least one wine/spirit supplier to at least one participating retail wine/spirit establishment, where said offer is to pay for a solicitation to at least one identified consumer of said participating retail wine/spirit establishment for a selected set of products;” and “analyzing information related to said subset of said set of product offerings with a computer, where said computer is part of said channel hub;” These elements are substantially the same as elements addressed in arguments regarding Claim 1. Also, Claim 14 recites: “generating, using said channel hub, a set of possible product offerings from said at least one supplier;” This element is substantially the same as the element addressed in arguments regarding Claim 12.

Claims 1 and 12 are novel with respect to Clark. Therefore, Claims 14 and 15 also are novel with respect to Clark. Applicants request that the rejection be removed.

#### **The Rejection of Claims 1 through 13 Under 35 U.S.C. §102(b)**

The Examiner rejected Claims 1 through 13 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,974,396 (Anderson et al.). Applicants respectfully traverse the rejection.

Anticipation requires that all of the elements of the claim be taught within the four corners of a single reference.

#### A. Claim 1

##### Anderson does not teach a supplier or any interaction with a supplier

Anderson is focused solely on gathering and analyzing customer information for use by retailers: “A method and system for gathering and analyzing customer and purchasing information permits a retailer or retail chain to process transactional information involving large numbers of consumers and consumer products. (First sentence of Abstract). Further:

According to the present invention, the above-identified problems are overcome and the above-stated goals are achieved by providing *a retailer or a retail chain* (emphasis added) with the ability to process transactional information involving large numbers of consumers and consumer products by gathering product information that uniquely identifies a specific product by type and manufacturer, grouping that product information into product clusters, and analyzing consumer retail transactions in terms of those product clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc. *A retailer* (emphasis added) queries the relational database using selected criteria, accumulates data generated by the database in response to that query, and makes business and marketing decisions based on that accumulated data. (col. 2, line 56 to col. 3, line 7).

Anderson’s method and system do not include participation of a supplier or customer and do not teach the involvement of an entity analogous to a supplier or customer. Therefore, Anderson does not teach, suggest, or motivate the following elements of Claim 1 since these elements include a supplier:

“receiving an offer from at least one wine/spirit *supplier* to pay for a solicitation to at least one identified *consumer* of at least one participating retail wine/spirit establishment for a selected set of products, where said offer is made by said at least one *supplier* to said participating retail wine/spirit establishment;”

“communicating a set of possible product offerings from said at least one wine/spirit *supplier* to at least one of said participating retailers of wine/spirits, where said set includes a number of products;”

The Examiner has cited the following excerpt from the Abstract of Anderson as support for Anderson including a manufacturer (and by apparent extension, a supplier) in Anderson’s method and system: “Product information is gathered that uniquely identifies a specific product by type and manufacturer and grouped into generic product clusters.” Anderson is teaching the manufacturer of a product as a field for an entry in a database. This has nothing to do with a manufacturer/supplier interacting with a channel hub as is recited in Claim 1, for example, offering to pay for solicitations.

Anderson also fails to teach, suggest, or motivate the remaining Claim 1 elements of: “receiving a communication from at least one said participating retailer agreeing to offer a subset of said set of product offerings at a sale price;” “analyzing first information related to said subset of said set of product offerings with a computer, where said computer is part of said channel hub” and “communicating said information related to said subset of said set of product offerings to an interested party.” Anderson fails to teach the communication of the product offerings from a supplier in the first place and, therefore, cannot teach an agreement, analysis, or communication of information regarding the product offering.

Anderson does not teach, suggest, or motivate a channel hub linking suppliers, retailers, and customers

Anderson teaches a system and method for gathering and analyzing a specific type of information (customer and purchasing) and is silent regarding an entity, analogous to the channel hub recited in Claim 1, which links suppliers, retailers, and customers.

Anderson does not teach all the elements of Claim 1. Therefore, Anderson does not anticipate Claim 1. Claims 2-5 depend from Claim 1 and also are novel with respect to the cited prior art. Applicants request that the rejection be removed.

## B. Claim 6

As noted for Claim 1, Anderson's method and system do not include participation of a supplier or customer, do not teach the involvement of an entity analogous to a supplier or customer, and do not teach a channel hub. Therefore, Anderson does not teach, suggest, or motivate the Claim 6 elements of:

"communicating a set of possible product offerings from at least one supplier to a channel hub for communication to at least one participating retailer of wine/spirits" Anderson does not teach a supplier or channel hub.

"receiving a communication from said hub that at least one said participating retailer agrees to offer a subset of said set of product offerings at a sale price;" Anderson does not teach the supplier offering the set of products in the first place.

"analyzing information provided to said hub from said participating retailer related to said subset of said set of product offerings with a computer, where said computer is associated with said hub. Anderson does not teach the supplier offering the set of products in the first place.

Anderson does not teach all the elements of Claim 6. Therefore, Anderson does not anticipate Claim 6. Claim 7 depends from Claim 6 and also is novel with respect to the cited prior art. Applicants request that the rejection be removed.

## C. Claim 8

Anderson does not teach the Claim 8 elements of:

"receiving a set of possible product offerings from a channel hub intended for at least one participating retailer of wine/spirits;" Anderson teaches the retailer accessing a database to obtain data: "A retailer queries the relational database using selected criteria, *accumulates data* (emphasis added) generated by the database in response to that query, and *makes business and marketing decisions* (emphasis added) based on that accumulated data." (Col. 3, lines 3-7). Assuming *arguendo* that the database of Anderson is analogous to a channel hub, Anderson is silent regarding the receipt of a product offering from the database.



“promoting a subset of said set of product offerings to said at least one said participating retailer;” Anderson fails to teach a product offering and therefore fails to teach a promotion for a product offering.

“receiving a communication from said channel hub that at least one of said participating retailer agrees to offer a subset of said set of product offerings at a sale price;” Anderson fails to teach a product offering and therefore fails to teach an agreement regarding a product offering.

Anderson does not teach all the elements of Claim 8. Therefore, Anderson does not anticipate Claim 8. Claim 9 depends from Claim 8 and also is novel with respect to the cited prior art. Applicants request that the rejection be removed.

#### **D. Claim 10**

Anderson does not teach, suggest, or motivate the following elements of Claim 10:

“receiving an offer sent by a channel hub for a selected set of products provided by a supplier of wine/spirits;” Anderson does not teach a supplier or any activities involving a supplier.

“selecting a subset of said selected set of products to offer for sale to retail consumers at a sale price;” and “communicating said selected subset of said selected set of products to said channel hub;” Anderson does not teach an offer for a set of products.

Anderson does not teach all the elements of Claim 10. Therefore, Anderson does not anticipate Claim 10. Claim 11 depends from Claim 10 and also is novel with respect to the cited prior art. Applicants request that the rejection be removed.

#### **E. Claim 12**

Anderson does not teach, suggest, or motivate the Claim 12 element of: “...transmission of a customized promotional offer created at least in part by a computer, from a channel hub directly to consumers of a retail wine/spirit establishment, where said computer is associated with said channel hub and said transmission is paid for by a supplier of wine/spirits.”

As noted for Claim 1, Anderson does not teach a supplier or any activities associated with a supplier. Further, Anderson does not teach a channel hub. Assuming *arguendo* that the database of Anderson is analogous to the channel hub, Anderson still fails to teach the database

generating a custom offer. Anderson's database gathers and analyzes customer and purchase information.

Anderson does not teach all the elements of Claim 12. Therefore, Anderson does not anticipate Claim 12. Claim 13 depends from Claim 12 and also is novel with respect to the cited prior art. Applicants request that the rejection be removed.

**F. New Claims 14 and 15**

Claims 14 and 15 substantially recite the elements of Claim 1. Also, Claim 14 recites: "generating, using said channel hub, a set of possible product offerings from said at least one supplier;" This element is substantially the same as the element addressed in arguments regarding Claim 12.

Claims 1 and 12 are novel with respect to Anderson. Therefore, Claims 14 and 15 also are novel with respect to Anderson. Applicants request that the rejection be removed.

**Conclusion**

Applicant respectfully submits that all pending claims are now in condition for allowance, which action is courteously requested.

Respectfully submitted,



C. Paul Maliszewski  
Registration No. 51,990  
Simpson & Simpson, PLLC  
5555 Main Street  
Williamsville, NY 14221-5406  
Telephone No. 716-626-1564

Dated: May 2, 2005  
CPM/